IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL Nos. 335 to 337 of 2006
With
CIVIL APPLICATION Nos.1747 to 1749 of 2006

Date of Decision:13.2.2006

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NEW INDIA ASSURANCE CO. LTD - Appellant(s)
Versus
ALPESH BHOGILAL DAVE & 1 – Defendant(s)
(For full cause title, see next page)

Coram:

The Hon'ble Mr.Justice Bhawani Singh, Chief Justice

The Hon'ble Smt.Justice Abhilasha Kumari,Judge

Whether approved for Reporting?

Appearance :
MR VIBHUTI NANAVATI for Appellant(s) : 1,
None for Defendant(s) : 1 - 2.

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(Per : THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI (ORAL)

1. First Appeal Nos.335 of 2006, 336 of 2006 and 337 of 2006 have arisen out of the common judgment and award dated 1.08.2005 passed in M.A.C. Petition

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Whether Reporters of Local Papers may be allowed to see the Judgment?

No.1561 of 1999, 1562 of 1999 and 1849 of 1999, arising out of the same accident, by the Presiding Officer, Fast Track Cort No.5,Ahmedabad (Rural), Ahmedabad. By way of the impugned judgment and award, the M.A.C.Tribunal has awarded compensation of Rs.77,900/- in M.A.C.P. No.1561 of 1999, Rs.1,21,440/- in M.A.C.P.No.1562 of 1999 and Rs.99,740/- in M.A.C.P.No.1849 of 1999, to be paid by the opponents therein jointly and severally along with interest at the rate of 7.5% per annum from the date of filing of the application.

2. The appellant in all the three Appeals is the Insurance Company, who was opponent No.2 in all the three claim petitions, which arose out of the same accident. Briefly stated the facts which emerge from the record are that on 21.5.1995 at about 3.00 P.M. the victim of M.A.C.Petition No.1561 of 1999 was going on his scooter and his brother, applicant of M.A.C.P.No.1849 of 1999 was the pillion rider. They were returning from Tragad village and when they reached near Ramapir Temple on Tragad road, mother of the applicant – Pushpaben, who is applicant in

M.A.C.P.No.1562 1999, accompanied by his sister were walking ahead of the scooter. As per the case set up by the claimants, the claimant in M.A.C.P.No.1561 of 1999 stopped his scooter on the correct side of the road and showed his hand to stop the Rickshaw. At that point of time Jeep bearing Registration No.GJ-2-K-3428 came from the wrong side. It was being driven by opponent No.1 in the claim petitions, in a rash and negligent manner with excessive speed. This jeep dashed with the scooter of the applicant and after that dashed with his mother, who was walking ahead of the Scooter. All the three claimants in the claim petitions received severe injuries as a result of this accident.

3. The claimant in M.A.C.Petition No.1561 of 1999 received severe injuries on hands, legs, head and other parts of the body. At the time of the accident he was aged 22 years and was earning Rs.4000/- per month. Against the claim of compensation for Rs.1,50,000/-, the M.A.C.Tribunal has awarded Rs.77,900/- by partly allowing the petition.

4. In M.A.C.Petition No.1562 of 1999, the mother of the other two claimants received severe injuries on her hands,legs, head and other parts of the body. She was aged about 40 years at the time of the accident and was earning Rs.5000/- per month. Against the claim of compensation for Rs.2 lacs, the M.A.C.Tribunal has awarded compensation to the tune of Rs.1,21,440/- by partly allowing the claim petition. In M.A.C.Petition No.1849 of 1999, the claimant was the pillion rider of the Scooter. He was aged about 20 years at the time of the accident and was earning Rs.4000/- per month. Against the claim of compensation of Rs.1,50,000/- set up by him in the claim petition, the M.A.C.Tribunal awarded Rs.99,740/- in his case by partly allowing the petition.

5. In the present appeals the appellant – Insurance Company has challenged the entire judgment and award dated 1.8.2005 passed in M.A.C.Petition Nos.1561 of 1999, 1562 of 1999 and 1849 of 1999 respectively by the Presiding Officer, Fast Track Cort No.5,Ahmedabad

(Rural), Ahmedabad mainly on the merits of the case and on the appreciation of the evidence adduced before the M.A.C.Tribunal. In the grounds of appeal, the appellant has more or less reproduced the summary of the oral evidence adduced by the witnesses and their cross-examination by the learned counsel for the appellant before the M.A.C.Tribunal, at length. According to the appellant, the M.A.C.Tribunal, on the basis of the evidence, as stated by the appellant in the grounds of appeal, should not have come to the conclusion it has arrived at and therefore, should not have awarded compensation to the claimants. According to the appellant, the Tribunal has failed to take into consideration the oral and documentary evidence on record in its correct perspective and has not properly appreciated the facts and material on record. The appellant has also attacked the impugned judgment and award on the issue of negligence and the conclusion arrived at by the M.A.C.Tribunal on that account.

6. We have heard Shri Vibhuti Nanavati for the appellant in all these three appeals. At the very

outset, on being asked whether the Insurance Company has obtained permission under Section 170 of the Motor Vehicles Act before filing the above appeals, the learned counsel for the appellant fairly stated that no such permission had been obtained from the M.A.C.Tribunal.

7. It is a settled position of law, as observed in (1998) 3 SCC 140 (Shankarayya and another v. United India Insurance Co.Ltd. and another), that the Insurance Company when impleaded as a party by the Court can be permitted to contest the proceedings on merits only if the conditions precedent mentioned in Section 170 of the M.V.Act are found to be satisfied. The Insurance Company cannot be permitted to contest the proceedings on merit in the absence of a reasoned order in writing from the M.A.C.Tribunal as per the provisions of Section 170 of the M.V.Act. The relevant paragraph of this judgment is reproduced herein-after:

> "4.It clearly shows that the Insurance Company when impleaded as a party by the Court can be permitted to contest the proceedings on merits only if the conditions precedent

> mentioned in the section are found to be satisfied and for that purpose the Insurance Company has to obtain order in writing from the Tribunal and which should be a reasoned order by the Tribunal. Unless that procedure is followed, the Insurance Company cannot have a wider defence on merits than what is available to it by way of statutory defence. It is true that the claimants themselves had joined Respondent 1, Insurance Company in the claim petition but that was done with a view to thrust the statutory liability on the Insurance Company on account of the contract of the insurance. That was not an order of the Court itself permitting the Insurance Company which was impleaded to avail of a larger defence on merits on being satisfied on the aforesaid two conditions mentioned in section 170. Consequently, it must be held that on the facts of the present case, Respondent 1, Insurance Company was not entitled to file an appeal on merits of the claim which was awarded by the Tribunal."

8. The ratio of this judgment has been followed in another judgment of the Apex Court reported in 2000(2) GLR 1729 (Rita Devi and others v. New India Assurance Co,Ltd. And another).

9. In the present appeals, even though it is noticed that the appellant – Insurance Company has been impleaded as the opponent No.2 in the M.A.C.Petitions, it seems that this has been done by the claimant in order to thrust the statutory liability on the Insurance Company on account of the

contract of Insurance. The mere fact that the appellant was impleaded as opponent No.2 in the M.A.C.Petitions can not be taken to mean that the Tribunal had given the permission to avail of a larger defence on merits. Admittedly, no such application under Section 170 of the M.V.Act was made by the appellant. The power under Section 170 of the M.V.Act could be exercised by the Claims Tribunal only after being satisfied that there is collusion between the person making the claim and the person against whom the claim is made or when person against whom the claim is made has failed to contest the claim. The order passed by the M.A.C.Tribunal under Section 170 has to be a reasoned order in writing. Even though the appellant has been permitted to cross-examine the witnesses of the claimants, in the absence of the requisite permission, it cannot be inferred that the appellant was given the leave or the liberty to avail of a larger defence on merits than the statutory defence available to it.

10. In view of the legal position, as laid down hereinabove, we are of the considered view that in

the absence of an order under Section 170 of the Motor Vehicles Act, the appeals filed by the Insurance Company are not maintainable. Accordingly, the appeals are summarily dismissed. Amount deposited in the Registry under Section 173 of the Motor Vehicles Act, 1988, be transmitted to the Tribunal concerned for payment to the claimant(s) along with the amount to be deposited as per the Award within two months.

11. In view of the dismissal of the Appeals, as above, the Civil Applications for staying the execution of the award does not survive and the same stand disposed of accordingly.

(Bhawani Singh)
Chief Justice

(Smt.Abhilasha Kumari)
Judge

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